

Congress extends 'fair use' clause to digital education

From eSchool News staff and wire service reports

November 1, 2002

Educators are applauding the passage of a bill that will allow teachers to use digitized portions of copyrighted materials—such as film, sound, and other media clips—in online courses and other distance-education programs without the expressed permission of the copyright holder. But a provision that requires schools to use technology to keep these materials from being copied has some school leaders worried.

The Technology, Education, and Copyright Harmonization (TEACH) Act, which brings a 26-year-old copyright law into the digital age, was first introduced in March 2001. Although it enjoyed bipartisan support, it was tabled last year so Congress could take care of more pressing business, including the Sept. 11 terrorist attacks.

To expedite its passage this year, the TEACH Act was attached as an amendment to the Department of Justice appropriations bill (H.R. 2215). Congress passed this bill Oct. 3 and President Bush is expected to sign it into law, after which the TEACH Act will go into effect immediately.

The legislation updates the Copyright Act of 1976 and accounts for advancements in digital transmission technologies that support distance education.

The current fair-use rules for distance education, as outlined in the 1976 law, only allow copyrighted materials to be transmitted one way over an analog technology, such as television. The 1976 law does not allow copyrighted materials to be shared through two-way transmissions or those involving digital technologies, such as satellite broadcasts, two-way videoconferencing, and internet-based courses.

The new measure:

- eliminates the current requirement that the instruction must occur in a physical classroom or that special circumstances must prevent the attendance of students in the classroom;
- permits temporary copies of copyrighted materials to be stored on networked file servers so this material can be transmitted over the internet; and
- allows educators to show limited portions of dramatic literary and musical works, audiovisual works, and sound recordings, in addition to complete versions of non-dramatic literary and musical works, which currently are exempted.

Miriam Nesbitt, legislative counsel for the American Library Association (ALA), said she was pleased to see the act finally pass through Congress. But she cautioned that it contains several restrictions that educators should be aware of. These restrictions are intended to minimize the risks to copyright owners that are inherent in using digital formats to transmit materials.

"It's not perfect, but it is certainly something that updates parts of the Copyright Act that haven't been updated since 1976," Nesbitt said.

While the TEACH Act improves upon the old law, it requires school districts to create or update copyright policies and implement technology that prevents students from copying and distributing material. The act allows copyrighted material to be used for distance education in the same way as in a traditional classroom.

For example, in a classroom setting, students must return textbooks or novels loaned to them for the semester. Also, neither teachers nor students are permitted to photocopy and pass around entire books.

In an online course, students cannot access copyrighted materials for longer than the class session, and they must not be able to copy, save, or further distribute the materials. Schools

also must use a technology protection measure that “reasonably” prevents students from doing this.

In addition, only the teacher can display copyrighted materials, and only enrolled students can access them during class time.

Schools with distance-education programs must inform students about copyright laws and tell them that materials used in connection with the course might be subject to copyright protection.

The act “recognizes finally that the ‘classroom’ is not contained to a physical space, but is really a virtual learning environment. It will help schools to provide access to higher quality resources in distance-learning settings,” said Bob Moore, executive director of IT services for the Blue Valley School District in Kansas.

But the technology requirements could be troublesome for school districts, Moore said: “Is there really realizable and affordable technology that prohibits the copying and distribution of copyrighted materials? It would seem there is a ways to go before that kind of expcetation can truely be made of schools. ”

Links:

ALA’s TEACH web site

<http://www.ala.org/washoff/teach.html>